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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION
16

17 VALERIE TORRES and RHONDA HYMAN,
individually and on behalf of all others
18 similarly situated,

19 Plaintiffs,

20 vs.

21 PRUDENTIAL FINANCIAL, INC.,
ACTIVEPROSPECT, INC., and
22 ASSURANCE IQ, LLC,

23 Defendants.

Case No. 3:22-cv-07465-CRB

**DECLARATION OF KELLY M. KLAUS
IN SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFFS'
MOTION FOR CLASS CERTIFICATION**

[Filed concurrently: Defendants' Opposition
to Plaintiffs' Motion for Class Certification;
Declaration of Dr. Nathaniel Polish;
[Proposed] Order]

Date: December 13, 2024
Time: 10 a.m.
Courtroom: Courtroom 6 – 17th Floor
Judge: Hon. Charles R. Breyer

DECLARATION

I, Kelly M. Klaus, declare as follows:

1. I am an attorney admitted to practice law in the State of California and this Court, a partner in the law firm of Munger, Tolles & Olson LLP, and counsel of record for Defendants Prudential Financial, Inc., ActiveProspect, Inc. and Assurance IQ, LLC (“Defendants”) in this action. I make this declaration in support of Defendants’ Opposition to Plaintiffs’ Motion for Class Certification. Except as to matters stated on information and belief, I have personal knowledge of the facts set forth in this declaration. As to matters stated on information and belief, I am reliably informed of those matters by persons who have such personal knowledge and I believe those matters to be true. If called as a witness, could and would testify competently to these facts under oath.

DEPOSITION TRANSCRIPTS

2. Attached hereto as **Exhibit 1** is a true and correct copy of excerpts from the deposition of Daniel Renz, taken March 13, 2024, in this action.

3. Attached hereto as **Exhibit 2** is a true and correct copy of excerpts from the deposition of Steven Rafferty, taken May 9, 2024, in this action.

4. Attached hereto as **Exhibit 3** is a true and correct copy of excerpts from the deposition of Rhonda Hyman, taken May 30, 2024, in this action.

5. Attached hereto as **Exhibit 4** is a true and correct copy of excerpts from the deposition of Valerie Torres, taken May 29, 2024, in this action.

DISCOVERY RESPONSES

6. Attached hereto as **Exhibit 5** is a true and correct copy of Plaintiff Rhonda Hyman’s Responses to Defendants’ Interrogatories (Set Two), dated May 23, 2024.

7. Attached hereto as **Exhibit 6** is a true and correct copy of Plaintiff Valerie Torres’s Responses to Defendants’ Interrogatories (Set Two), dated May 16, 2024.

EXPERT REPORTS

8. Attached hereto as **Exhibit 7** is a true and correct copy of an expert report prepared and executed by Dr. Nancy Mathiowetz, dated September 25, 2024.

PRODUCED DOCUMENTS

9. Attached hereto as **Exhibit 8** is a true and correct copy of a document produced in this action bearing Bates PRU0000001.

10. Attached hereto as **Exhibit 9** is a true and correct copy of a document produced in this action bearing Bates PRU0000097.

11. Attached hereto as **Exhibit 10** is a true and correct copy of a document produced in this action bearing Bates PRU0000652.

12. Attached hereto as **Exhibit 11** is a true and correct copy of a document produced in this action bearing Bates PRU0002348.

13. Attached hereto as **Exhibit 12** is a true and correct copy of a document produced in this action bearing Bates PRU0002582.

14. Attached hereto as **Exhibit 13** is a true and correct copy of a document produced in this action bearing Bates PRU0002587.

15. Attached hereto as **Exhibit 14** is a true and correct copy of a document produced in this action bearing Bates PRU0002712.

16. Attached hereto as **Exhibit 15** is a true and correct copy of a document produced in this action bearing Bates PRU0002714.

17. Attached hereto as **Exhibit 16** is a true and correct copy of a document produced in this action bearing Bates PRU0002716.

18. Attached hereto as **Exhibit 17** are true and correct copies of an article titled, "Is data stored with the TrustedForm certificates," produced in this action bearing Bates AP0000712, and an article titled, "TCPA Litigation and Compliance Risks: What You Can Do to Protect Yourself," produced in this action bearing Bates AP0000713.

19. Attached hereto as **Exhibit 18** is a true and correct copy of a document produced in this action bearing Bates AP0000870.

20. Attached hereto as **Exhibit 19** is a true and correct copy of a document produced in this action bearing Bates PLFS0001.

OTHER DOCUMENTS

21. Attached hereto as **Exhibit 20** are the following articles regarding so-called “session replay” software:

a. “More than 480 web firms record every keystroke” (BBC, November 21, 2017);

b. “Over 400 of the World’s Most Popular Websites Record Your Every Keystroke, Princeton Researchers Find” (VICE, November 20, 2017);

c. “No boundaries: Exfiltration of personal data by session-replay scripts (Freedom to Tinker, November 15, 2017);

d. “Understanding Session Replay Scripts – A Guide for Privacy Professionals” (Future of Privacy Forum, March 5, 2018);

e. “Your smartphone is spying on you, but not how you think” (USA Today, July 6, 2018);

f. “The Analysts Recording Your Screen Say It’s for Your Own Good” (The Atlantic, February 12, 2019);

g. “Papa John’s is being sued for allegedly ‘wiretapping’ its own website” (Tech Radar, October 7, 2022);

h. “Ulta Beauty hit with lawsuit over alleged use of web tracking technology” (Cosmetics Business, December 12, 2022).

22. Attached hereto as **Exhibit 21** are the following articles regarding *Javier v. Assurance IQ*, No. 3:20-cv-02860-CRB (N.D. Cal. filed Apr. 24, 2020):

a. “Consent Via ‘Clickwrap’ Defeats Privacy Claims–Javier v. Assurance (Technology & Marketing Law Blog, March 14, 2021);

b. “Another Court Dismissing Session Replay Software Litigation Based on Disclosures in Privacy Policy” (National Law Review, September 7, 2021);

c. “More California Invasion of Privacy Act Claims Expected Following Ninth Circuit Decision” (JD Supra, June 10, 2022);

1 d. “Timing Is Everything: Ninth Circuit Addresses Chatbot Consent
2 Requirements” (National Law Review, August 22, 2022).

3 23. Both named Plaintiffs testified at deposition that they became plaintiffs in this
4 litigation after seeing advertisements on social media from Girard Sharp LLP, stating that anyone
5 who had visited the Prudential website may have had their personal information exposed and
6 could be entitled to compensation.

7 24. Following the depositions, Defendants initially informally requested copies of the
8 advertisements and then served a document subpoena on Girard Sharp.

9 25. Defendants then asked Plaintiffs’ counsel to provide the dates on which the
10 advertisements ran. Attached hereto as **Exhibit 22** is a September 20, 2024 email from Plaintiffs’
11 counsel, Jordan Isern, to my colleague Grace Davis Fisher and others, with the subject line, “Hazel
12 et al. v. Prudential Financial, Inc. et al., Case No. 22-cv-07465-CRB (SK).” As reflected in Ms.
13 Isern’s September 20, 2024 email, Plaintiffs’ counsel have represented that the Girard Sharp
14 advertisements started to run online on October 4, 2022.

15 26. I am informed and believe that Assurance employees attempted to determine, for
16 the period October 4, 2022 through December 13, 2022, how many visits to Prudential’s “Pru
17 Branded Path” were from IP addresses with a California geolocation. I am further informed and
18 believe that the Assurance employees determined there were more than 6,000 such visits with a
19 link to a TrustedForm certificate.

20 I declare under penalty of perjury under the law of the United States and the State of
21 California that the foregoing is true and correct and that this Declaration was executed on
22 September 25, 2024, at San Francisco, California.

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24 /s/ Kelly M. Klaus
25 KELLY M. KLAUS
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